

**FIRST AMENDMENT TO NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR
DISCARDED MATERIALS MANAGEMENT
FOR MULTI-FAMILY AND COMMERCIAL GENERATORS
AND FOR PROVIDING
TEMPORARY SOLID WASTE HANDLING SERVICES**

**BETWEEN
CITY OF COSTA MESA
AND
[Contractor Name]
2024**

This First Amendment to Non-Exclusive Franchise Agreement for Discarded Materials Management for Commercial Generators and for Providing Temporary Solid Waste Services (“First Amendment”) is made and entered into this ____th day of _____, 2024 by and between the City of Costa Mesa (“City”) and [Contractor Name] (“Contractor”) (collectively, the “Parties”).

RECITALS

WHEREAS, on or about _____, 20__, the City and the Contractor entered into that certain Non-Exclusive Franchise Agreement for Discarded Materials Management for Commercial Generators and for Providing Temporary Solid Waste Services (“Agreement”), compliance with the operative requirements was to commence January 1, 2022;

WHEREAS, the Parties wish amend the compensation and billing provisions of the Agreement pursuant to the provisions of this First Amendment, which amended compensation provisions shall become effective on _____, 2024.

NOW, THEREFORE, the Parties hereto agree as follows:

1. Section 13.1 of the Agreement entitled “Compensation; Billing” shall be amended to add sub-section 13.1.2, Charges and Penalties Related to Contracts with Customers, to read as follows in ***bold italicized text***:

13.1 Compensation; Billing

Contractor shall provide services pursuant to this Agreement at rates it sets, charges to, and collects from Customers and Responsible Customers. Contractor shall provide all Customers, or Responsible Customers, where applicable, with itemized Bills, detailing charges for all services, including charges for late payments, as well as the period of service to which the Bill applies. Contractor acknowledges that it, and not Customers nor Responsible Customers, is to pay a Franchise Fee and the other fees noted herein to City as consideration for this Agreement.

Accordingly, Contractor's Bills shall not include separate itemization of a "Franchise Fee" or other similar designation relating to fees which Contractor is required to pay to City.

Billings may be made on a monthly basis for all Customers and Responsible Customers. Premises ordering service after the first of the month or canceling service prior to the end of the month shall be charged on a prorated per-pickup basis.

A. General Billing Requirements.

1. **Contractor Responsible.** Contractor shall bill all Customers and be solely responsible for collecting payment from Customers. Billing shall be performed on the basis of services rendered and this Agreement shall create no obligation on the part of any Person on the sole basis of the Ownership of property. Contractor shall be responsible for collecting bad debt.
2. **Bill Inserts.** Contractor shall include bill inserts in accordance with Section 8.4.
3. **Records.** Contractor shall maintain copies of all billings and receipts, each in chronological order, for the Term of this Agreement, for inspection and verification by the City Contract Manager at any reasonable time but in no case more than ten (10) calendar days after receiving a request to do so.

B. Rates for Waivers. Contractor shall establish Rates for any Customers that have been granted de minimis, physical space constraint, Collection frequency, low population, elevation, disaster, and/or emergency waivers pursuant to Sections 8.7 and 8.8. Contractor shall ensure that accurate records are maintained for such waivers and Customers are billed properly.

C. Application of Contamination Surcharges. In accordance with Section 8.3.1.C.4, the Contractor is required to assess contamination Processing fees on Customers with repeated occurrences of excess contamination. Any contamination Processing fees to be assessed for a Customer shall be included and itemized on the Customer's invoice for the billing period in which the Contractor notified the Customer of the assessment of the contamination Processing fee.

D. Universal Enrollment Process. City requires that Generators are enrolled in Collection services pursuant to Chapter IV of Title 8 of the Municipal Code. Contractor shall assist the City in ensuring that the enrollment of Generators occurs in a timely and efficient manner. City and Contractor shall cooperatively develop and agree to a process no later than insert date.

Contractor shall maintain records and provide reports necessary for the City to verify the City-wide enrollment of Generators.

13.1.1 Suspension of Service Due to Non-Payment.

Contractor may discontinue service to any Customer, or Responsible Customer, where applicable, as set forth in this Section. Customers or Responsible Customers who have not remitted required payments within sixty (60) days after the date of Billing shall be notified on forms approved by the Director. Said forms shall contain a statement that services may be discontinued fifteen (15) days from the date of the notice if payment is not made before that time. If payment is not made by the expiration of said fifteen (15) day period, Contractor must contact City and advise of the delinquency and may discontinue service to that Customer or Responsible Customer, forty-eight (48) hours thereafter with City's prior written consent. Contractor shall resume Solid Waste Collection on the next regularly scheduled Collection day for any Customer or Responsible Customer whose service is discontinued upon receipt of payment of delinquent fees and any related service restart charges, or at such sooner time as directed to do so by City. Contractor may not charge for service during any period in which service was suspended. Any delinquent fees or service charges to be imposed in connection with delinquent accounts shall be set by Contractor and be subject to Director approval. A deposit may be required of accounts which have been discontinued for non-payment prior to re-instituting service at such accounts. Notwithstanding the above, in the event of a Billing dispute and/or to avoid negatively impacting public health or safety, Contractor shall not suspend service to any Customer or Responsible Customer without the City's prior written consent, and shall continue to provide service to any Customer or Responsible Customer if directed to do so by City without regard to the status of said Customer's or Responsible Customer's account.

13.1.2 Charges and Penalties Related to Contracts with Customers

Contractor may negotiate service contracts with Customers provided such contract terms are consistent with this Agreement. Existing Customer contracts shall remain effective and without change through October 1, 2024. After that date, all Contractor Customers are free to cancel service for any reason and retain another franchised Contractor by providing six (6) months' notice; provided, however, that any Customer who has contracted with the Contractor for twenty-four (24) months or longer may cancel any service contract with three (3) months' notice. Any contract issued after October 1, 2024 must allow a Customer to cancel with no more than six (6) months' notice, and without limitation or penalty, regardless of the remaining agreement term. The Contractor is required to coordinate bin removals to reasonably coincide with service end dates and is not allowed to charge any bin removal fees in instances where a cancellation notice has been duly provided by the Customer. The only permissible charge would be for any months remaining, within that six (6) month or three (3) month notice period, as the case may be, should a Customer wish to replace the Contractor prior to the required six (6) month or three (3) month notice period.

IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to be executed as of the day and year first set forth above.

[SIGNATURES ON FOLLOWING PAGE]

“City”

CITY OF COSTA MESA

Dated: _____

By: _____
Lori Ann Farrell Harrison, City Manager

ATTEST:

By: _____
Brenda Green, City Clerk

APPROVED AS TO FORM:

By: _____
Kimberly Hall Barlow, City Attorney

“Contractor”

[COMPANY NAME]

Dated: _____

By: _____
[Name, Title]

Dated: _____

By: _____
[Name, Title]